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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/545,015	04/07/2000	Seth Haberman	20429/1	9448

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EXAMINER	
BELIVEAU, SCOTT E	

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/545,015	HABERMAN ET AL.	
	Examiner	Art Unit	
	Scott Beliveau	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 December 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 December 2005 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1 and 3-13 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-6, 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Ten Kate et al. (US Pat No. 6,601,237).

In consideration of claims 1 and 4, Figure 1 of the Ten Kate et al. reference illustrates a "system for dynamically constructing a non-interactive personalized message to be viewed by an intended audience" in the form of a personalized viewing schedule. The system comprises a "message campaign" associated with coordinated effort to provide users with the capability to automatically watch programming of interest. The claims are not limiting with respect to the particular nature or format of the campaign. The "message campaign" includes a "message template" (Figures 2B and 3) or timeline associated with available timeslots which "defines a framework for constructing said personalized message" indicative or conveying to the viewers desirable programming (ex. personalized message – These are the programs which are deemed desirable to you). As illustrated,the "message template comprises a plurality of media segment slots constituting said personalized message . . . including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot" associated with the time segments in which to populate with programming wherein the audio segments overlap video segments in connection with the presentation of a television program with corresponding audio (Col 3, Lines 60 – Col 4, Line 5). The system comprise a "plurality of media segments [selected from the group] including video segments and audio segments" corresponding to the potential programming available with which to populate the "personalized message" or customized schedule(Figure 4). As illustrated in Figure 4, "each video segment" corresponding to available programming at a given time (ex. R1, R2, R3, A1, B1) is "selectable for insertion into at least one of said video segment slots of said message template, wherein several of said video segments are selectable for a same one of said video

segment slots of said message template" by virtue of the system deciding which of the several available programming selections that the user would initially desire to watch. Similarly, "each audio segment is selectable for insertion into at least one of said audio segment slots of said message template" in association with its corresponding television programming. It is noted that the claims do not necessarily require that the particularly available audio/video segments can be necessarily independently selected from one another (ex. a particular TV show that is distributed with one audio track can have that particular audio track replaced/substituted with another that is deemed more desirable) or that other sub-components of a particular television program can be altered dynamically.

The system further comprises a "plurality of expert rules" associated with the particular assignment of priority ratings, scheduling process, and decision making process regarding time conflicts between programs (Col 2, Lines 22-41) and a "message assembly component" [15/16] that is "responsive to user profile data of said intended audience, and configured to apply said plurality of expert rules to said user profile data in order to select appropriate media segments for each of said media segment slots of said message template, in order to assemble said personalized message for said intended audience, said assembly performed without interaction by said intended audience" (Col 5, Line 64 – Col 6, Line 46). Such assembly of the message is construed as being "without interaction by said intended audience" by virtue of the message being assembled responsive to the reception of DVB-SI data (Col 4, Line 38 – Col 5, Line 65) such that the user simply tunes to a particular channel and watches the particularly selected programming (Col 1, Lines 40-58).

Claim 3 is rejected wherein the "said message assembly component also uses . . . temporal information in order to select appropriate media segments for assembling said personalized message". For example, the system determines what programs are currently available and/or adjusts/rearranges the scheduling such that particular programs may fit into a desired slot/gap (Col 6, Lines 20-46).

Claim 5 is rejected wherein "several of said media segments which corresponds to a same one of said media segment slots of said message template are of different lengths, and said message template appropriately adjusts said personalized message based on a length of a selected one of said media segments" (Col 6, Lines 20-46).

Claim 6 is rejected wherein the "personalized message is assembled immediately before presentation to said intended audience" (Col 1, Lines 39-58).

Claim 10 is rejected as previously set forth in the rejection of claim 1. In particular, the reference discloses a "method for dynamically constructing a non-interactive personalized message" indicative or conveying to the viewers desirable programming (ex. personalized message – These are the programs which are deemed desirable to you) "for viewing by an intended audience". The method involves "obtaining user profile data for said intended audience" (Col 6, Lines 8-12) and "selecting a message template" associated with the currently provided schedule information (Figures 2B and 3) which "defines a framework for constructing said personalized message and includes a plurality of media segment slots [including video segment slots and audio segment slots wherein at least one video segment slot overlaps at least one audio segment slot which] constitute said personalized message" (Figure 4). As aforementioned, the particular segment slots are construed as being associated

with the television programming available for insertion into the personalized schedule. The system subsequently, "applies a plurality of expert rules to said user profile data and said message template, in order to select from a plurality of media segments including video segments and audio segments, appropriate media segments" corresponding to various television programming options for insertion into said plurality of media segment slots in said message template, wherein several of said video segments are selectable for a same one of said video segment slots of said message template". For example, several of the available programming choices could have selected for display during the first display period. The "personalized message" is subsequently "assembled . . . using said message template and said selected media segments, without any interaction by said intended audience" and is "provided . . . in a format for delivery to said intended audience for viewing" such that the user simply tunes to a particular channel in order to watch the associated presentation of television programming (Col 6, Line 66 – Col 6, Line 46)

Claim 11 is rejected wherein "said message template and plurality of message segments are created as part of a message campaign" associated with the presentation and delivery of desirable programming to the subscriber.

Claim 12 is rejected wherein "said steps of assembling said personalized message and providing said assembled personalized message is performed immediately before delivery to said intended audience" (Col 1, Lines 39-58).

Claim 13 is rejected as previously set forth in the rejection of claims 1 and 10. In particular, the reference discloses a "method for dynamically constructing a non-interactive personalized message" indicative or conveying to the viewers desirable programming (ex.

personalized message – These are the programs which are deemed desirable to you) "for viewing by an intended audience". The method involves "obtaining user profile data for said intended audience" (Col 6, Lines 8-12), "crating a plurality of media segments, including video segments and audio segments" corresponding to distributed television programming, "creating a message template" associated with the currently provided schedule information (Figures 2B and 3) which "defines a framework for constructing said personalized message and includes a plurality of media segment slots [including video segment slots and audio segment slots wherein at least one video segment slot overlaps at least one audio segment slot which] constituting said personalized message" (Figure 4). As aforementioned, the particular segment slots are construed as being associated with the television programming available for insertion into the personalized schedule. The system subsequently, "applies a plurality of expert rules to said user profile data and said message template, in order to select from a plurality of media segments including video segments and audio segments, appropriate media segments" corresponding to various television programming options for insertion into said plurality of media segment slots in said message template, wherein several of said video segments are selectable for a same one of said video segment slots of said message template". For example, several of the available programming choices could have selected for display during the first display period. The "personalized message" is subsequently "assembled . . . using said message template and said selected media segments, without any interaction by said intended audience" and is "provided . . . in a format for delivery to said intended audience for viewing" such that the user simply tunes to a particular

channel in order to watch the associated presentation of television programming (Col 6, Line 66 – Col 6, Line 46).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ten Kate et al. (US Pat No. 6,601,237).

In consideration of claim 7, the Ten Kate et al. reference discloses that the user profile may be specified by habit watching or explicit user input (Col 6, Lines 12-13); however the reference does not disclose that the information is necessarily "obtained from a plurality of user information data sources". The examiner takes OFFICIAL NOTICE that the particular the particular creation of a profile wherein "user profile data of [an] intended audience is

obtained from a plurality of user information data sources" is notoriously well known in the art. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Ten Kate et al. such that the "user profile data of said intended audience is obtained from a plurality of user information data sources" for the purpose of utilizing a plurality of data regarding a particular user interests, purchases, etc. so as to develop a robust user profile in order to better determine a users interests in selecting targeted programming.

Claims 8 and 9 are rejected wherein the aforementioned "message campaign" associated with the particular presentation of desirable programming includes a target entity profile" corresponding to that of the particular user operating the system and particular programming desired for the customized schedule (ex. Sports programming only) which further "provides an indication of appropriate media segments for selected user profile data" and an "indication for selecting said intended audience from said user information data sources" (ex. provide a schedule comprising only sporting events and prioritize between available sporting events based upon my sport preferences).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Arellano et al. (US Pat No. 6,694,482) reference discloses a system and method for creating and delivering interactive multimedia content that dynamically adapts to the intended recipient.
- The Ficco (US Pub No. 2005/0166224) reference discloses a system and method for adapting broadcast advertisements for the intended recipient.
- The Slade et al. (US Pat No. 5,550,735) reference discloses a computerized system and method for compiling a personalized media presentation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343. The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott Beliveau
Examiner
Art Unit 2614

SEB
February 8, 2006